

OFFICE OF THE SUPERIOR COURT
SUPERIOR COURT

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OCTOBER 25, 2021

MEMORANDUM OF DECISION

This property tax appeal concerns the fair market value of a surface parking lot at 10-52 Ford Street in Hartford, Connecticut. The parties tried the matter to the court on May 5, 2021. Each party presented the report and testimony of an expert appraiser. As set forth below, the court finds that the plaintiff has met its burden of proving aggrievement, i.e., that the City overvalued the property. However, the court declines to accept the opinion of either expert in toto. The court finds that the fair market value of the property as of October 1, 2016 is \$3,900,000.

I

BACKGROUND

The property consists of 2.08 acres containing 275 to 286 parking spaces. It is located in the City's Central Business District, just across from Bushnell Park. The property was once the site of a Hilton hotel, which was demolished in the early 1990s. The property has been used exclusively as a parking lot since then.

For the October 1, 2016 Grand List year and subsequent years, the City assessed the property at \$5,936,500, fair market value. The plaintiff appealed to the City's Board of

Electronic notice sent to all counsel of record,
and to Official Reporter. A. Jordanopoulos, Ct. officer

Assessment Appeals, which did not disturb the assessment. The plaintiff timely appealed to the Superior Court pursuant to General Statutes § 12-117a.¹

The plaintiff disclosed Barry Cunningham as its expert. The City disclosed Rocco Quaresima. Both are qualified real property appraisal experts. Both agreed that the highest and best use of the property on October 1, 2016, was as a parking lot. However, Quaresima added a significant nuance; he opined that the highest and best use of the property is “interim use as a surface parking lot with eventual commercial and residential development” when “market conditions improve or public funding is secured.” Defendant’s Exhibit (Def. Ex.) A, p. 31; Trial Transcript (TT), p. 65. Thus, Cunningham sees a future for the property consistent with three decades of past use. Quaresima believes commercial and residential development of the property is a realistic possibility, which must be taken into account when determining fair market value. This is one of the key disputes the court must resolve.

Cunningham employed both sales comparison and income capitalization approaches to develop his opinion of value. His sales comparison and income approaches yielded fair market values of \$2,000,000 and \$2,270,000, respectively. Of the two approaches, Cunningham gave greater weight to the income approach. He concluded that the fair market value of the property as of October 1, 2016 was \$2,100,000, or approximately \$23/sq. ft.

Quaresima also used a sales comparison approach. He did not use the income approach because he believed he lacked sufficient data to perform such an analysis properly. He opined that the fair market value of the property as of October 1, 2016, was \$6,070,000, or \$67/sq. ft.

¹ The plaintiff also asserted a claim under General Statutes § 12-119. The plaintiff withdrew that claim before trial.

Beyond their disagreement over the property's highest and best use, Cunningham and Quaresima also disagreed about relevance, under a sales comparison approach, of an April 2015 sale of a parking lot at 272-300 Asylum Street. That property is located close to the subject property and sold for \$3,600,000, or \$125/sq. ft. Cunningham was aware of the sale but did not include it in his sales comparison analysis. He believes that the buyer overpaid for the property in April 2015 and that the sales price does not reflect its fair market value. By contrast, Quaresima included the sale in his analysis. But none of the other five properties he included had a fair market value, after certain adjustments, above \$59/sq. ft. And three of those five properties had fair market values in the low to mid \$40/sq. ft. range. Significantly, when the City assessed 272-300 Asylum Street as of October 1, 2016, it only assessed it at \$1.9 million fair market value, or \$66/sq. ft., i.e., approximately one-half of the actual April 2015 sales price. In short, whether 272-300 Asylum Street is comparable to the subject property, and thus whether the April 2015 sale should be considered in this case, is another dispute the court must resolve.

The experts also have somewhat more generic disagreements about whether certain sales that each includes in their respective sales comparison analyses are, in fact, comparable to the subject property. The court addresses these issues below.

II

LEGAL ANALYSIS AND FINDINGS OF FACT

A

The legal framework for § 12-117a property tax appeals is well-established. “[T]he trial court performs a two-step function. The burden, in the first instance, is upon the plaintiff to show that he has, in fact, been aggrieved by the action of the board in that his property has been overassessed. . . . In this regard, [m]ere overvaluation is sufficient to justify redress under [§ 12-

117a], and the court is not limited to a review of whether an assessment has been unreasonable or discriminatory or has resulted in substantial overvaluation. . . . Whether a property has been overvalued for tax assessment purposes is a question of fact for the trier. . . . The trier arrives at his own conclusions as to the value of land by weighing the opinion of the appraisers, the claims of the parties in light of all the circumstances in evidence bearing on value, and his own general knowledge of the elements going to establish value including his own view of the property. . . . Only after the court determines that the taxpayer has met his burden of proving that the assessor's valuation was excessive and that the refusal of the board of [assessment appeals] to alter the assessment was improper, however, may the court then proceed to the second step in a § 12-117a appeal and exercise its equitable power to grant such relief as to justice and equity appertains. . . . If a taxpayer is found to be aggrieved by the decision of the board of [assessment appeals], the court tries the matter de novo and the ultimate question is the ascertainment of the true and actual value of the applicant's property." (Internal citations and quotation marks omitted.) *Walgreen E. Co., Inc. v. Town of West Hartford*, 329 Conn. 484, 491-92, 187 A.3d 388, 395 (2018).

"The trial judge is the sole arbiter of the credibility of the witnesses and the weight to be given specific testimony. . . . The credibility and the weight of expert testimony is judged by the same standard, and the trial court is privileged to adopt whatever testimony [it] reasonably believes to be credible." *Nutmeg Housing Development Corp. v. Town of Colchester*, 324 Conn. 1, 10, 151 A.3d 358, 364-65 (2016).

Accordingly, the court must first determine whether the plaintiff has met its burden of proving that it is aggrieved by the action of the City's Board of Assessment Appeals upholding the City's October 1, 2016 assessment. The court concludes that the plaintiff has met that burden.

Although the court does not adopt Cunningham's ultimate opinion of value, the court credits his opinion that the City's assessed fair market value of \$5,936,500 exceeds the true fair market value of the property. Therefore, the court proceeds to the second step of the § 12-117a analysis and considers de novo the question of the fair market value of the property.

B

Initially, the court credits Cunningham's opinion that the highest and best use of the property is as a parking lot, both as of October 1, 2016 and for the foreseeable future. The property has been a parking lot for nearly thirty years. Although this history is not dispositive of future use, the court does not credit Quaresima's opinion that this longstanding use is merely an interim use and that commercial and residential development of the property is a reasonable prospect in the foreseeable future. The court's credibility determination on this point necessarily compels a lower fair market valuation than Quaresima's opinion of value.

Next, the court considers the parties' very differing treatments of the April 2015 sale of 272-300 Asylum Street for \$3.6 million or \$125/sq. ft. As noted, the sales price of that property is not merely an outlier; it is nearly three times the price of the average adjusted fair market value of all of the other properties Quaresima deemed comparable. Moreover, the City only assessed the property at \$1.9 million, or \$66/sq. ft., for the October 1, 2016 Grand List. The court credits Cunningham's view that there are too many questions about the April 2015 sale to include it as a comparable.

The court also determines that two other properties Quaresima included in his sales comparison approach to value are not comparable. Those properties, 3 Constitution Plaza and 1006-1032 Main Street, were last sold in 2008. That is eight years, and one Great Recession,

before October 1, 2016. The court does not credit Quaresima's opinion that such dated sales are relevant to determining the value of the subject property in 2016.

Two of the sales that Quaresima included in his sales comparison approach to value—185-201 Pearl Street and 318 Ann Uccello Street—are also included in Cunningham's sales comparison approach, albeit with different adjustments. The court credits Quaresima's adjustments. The court also credits Quaresima's inclusion of 185 Asylum Street in his sales comparison analysis. Cunningham did not include that property in his analysis.

Cunningham only included three properties in his own sales comparison approach. The two that Quaresima also included in his analysis, 318 Ann Uccello Street and 185-201 Pearl Street, were just discussed. The third is 271-273 Windsor Street, a parking lot that the City purchased in 2014 as part of a minor league baseball stadium development project. The property is north of Interstate 84. Although it is close to downtown Hartford, it is not part of the Central Business District. The court does not consider it to be a comparable sale.

In sum, the court concludes that three properties are appropriate for a sales comparison approach: (1) 185-201 Pearl Street (fair market value \$43.91/sq. ft.), (2) 318 Ann Uccello Street (fair market value \$46.09/sq. ft.); and (3) 185 Asylum Street (fair market value \$47.47/sq. ft.). The average is \$45.82/sq. ft.

C

Although Cunningham used a sales comparison approach, he placed greater weight on his income approach, which resulted in a fair market value of \$2,100,000. Although appraisal experts typically rely on income approaches in commercial real estate valuation matters, Quaresima did not use this approach because he believed he lacked sufficient income and

expense data concerning the property. In particular, he did not have the parking lot operator's (LAZ Parking) lease, which Cunningham possessed.

The court concludes that the City could have used the discovery process to obtain the data necessary to do its own income approach. The court credits Cunningham's income approach valuation opinion.

D

The court now must reconcile two very different fair market valuations based on two different, but well-recognized, valuation approaches. Using the court's sales comparison approach findings in Part C, the fair market value of the property would be approximately \$4.153 million ($\$45.82/\text{sq. ft.} \times 90,621 \text{ sq. ft.}$).² Using Cunningham's income approach, the value would be \$2,100,000.

It is manifest that the party's very different positions concerning the fair market value of the property are driven largely, although not exclusively, by their differential treatment of the April 2015 sale of 272-300 Asylum Street. That sale skews Quaresima's sales comparison towards a much higher valuation. And it would have skewed Cunningham's sales comparison too, if he had included the property in his analysis. But the court has credited Cunningham's opinion that this sale should not be included in a sales comparison approach.

On balance, the court gives much greater weight to the sales comparison approach than to the income approach under the unique facts and circumstances of this case. When expert

² The court understands and acknowledges that expert appraisers do not develop an ultimate opinion of value by simply calculating the mathematical average of their comparables. As they frequently remark, valuation is an art, not a science. The court has used the mathematical average only to identify an approximate fair market value using a sales comparison approach in light of its determination that some of the sales Quaresima included in his analysis are not, in fact, comparable.

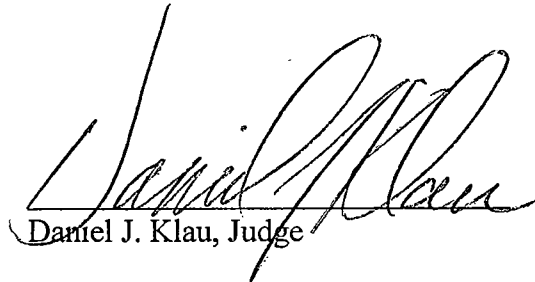
appraisers reconcile valuations resulting from two distinct approaches, they do not simply choose the mathematical average of the two approaches. Nor will the court. To reiterate, the trier of fact in a property tax appeal “arrives at *his own conclusions as to the value of land* by weighing the opinion of the appraisers, the claims of the parties in light of all the circumstances in evidence bearing on value, and his own general knowledge of the elements going to establish value including his own view of the property.” (Emphasis added.) *Walgreen E. Co., Inc. v. Town of West Hartford*, 329 Conn. 484, 491-92, 187 A.3d 388, 395 (2018).

Based on the evidence, the claims of the parties, and after weighing the opinions of the experts, the court finds that the fair market value of the subject project, as of October 1, 2016 and subsequent years until the next town wide revaluation, was \$3,900,000.

Judgment shall enter for the plaintiff on Count 1 of the Complaint without costs to either party.

SO ORDERED.

October 25, 2021



Daniel J. Klau, Judge